

OPINION
56-69

July 10, 1956 (OPINION)

COUNTY AUDITOR

RE: Qualification to Pass on Application for Division of Property

This is in reply to your letter requesting an opinion of this office on the matter of qualifications of a county auditor to pass on his own application for division of property for redemption under the provisions of chapter 57-25 N.D.R.C. 1943.

As your letter states the statutory law does not provide for the substitution of another officer in such an instance. It hardly requires the citation of authority to establish the principle that no person can be a judge in his own case. As to the application of this principle to administrative officers, see 42 Am. Jur., Section 311; Public Administrative Law, Section 21.

However, in an instance of this type, where the statute specifically designates a particular officer to pass upon the question, where there is no provision for substitution of another officer and where the county auditor's failure to act will absolutely prevent a determination of the proceeding, it is our thought that the rule of necessity would apply, and that in this instance the county auditor would be justified in acting on his own application. While, the case is not directly in point, we believe the language and reasoning of the case of State v. Fisk, 15 N.D. 219, is sufficiently broad to sustain this proposition.

We do agree with the thought expressed in your letter that the matter should properly be handled in the auditor's office by his deputy, for practicality of administration. We might further suggest that it may be advisable to appeal the decision of the county auditor to the board of county commissioners under section 57-2502 of the N.D.R.C. of 1943 to be certain that there is no question of the fairness of the auditor's decision, if such is necessary under all the facts and circumstances to the particular case.

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